

Housing law bulletin

Issue 171 - 22nd March 2010



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The Latest Housing Law News

New National Standards for Social Housing published: everyone working in, or advising on, social housing (whether council or housing association stock) will need a copy of the new national standards for social housing published by the Tenant Services Authority (TSA) last week. These standards come into force on 1 April 2010, backed by the statutory regulation and enforcement powers vested in the TSA. For copies of the Standards in a variety of formats, click here.

Housing associations, rent arrears and Ground 8: on 8 March 2010 the TSA published research painting an improving picture of how housing associations deal with tenants in arrears. The findings reveal that: (1) at the end of 2007-08, 5.3% of all rent due was unpaid, down from 5.6% in 2005; and (2) evictions have fallen from 9,114 in 2004-05 to 7,703 in 2008-09 - about 95% of those were for rent arrears. The research also reviews use of Ground 8 by RSLs. For a copy of the report, click here.

Social Housing Allocation: to help local housing authorities in England put into practice the policy messages contained in the latest statutory Code of Guidance on Housing Allocation, the Chartered Institute of Housing last week published a new Practice Brief (*Allocations and Local Flexibility*). For a copy, click here. For a more general description of current issues in social housing allocation by local housing authorities, click here.

Homelessness: the latest statistics for local housing authority statutory homelessness provision in England (last quarter 2009) were published on 11 March 2010. They indicate that despite the impact of the recession there have been further substantial falls in the number of households accepted and of the number in temporary accommodation. This will be the result of either improved homelessness prevention measures or of effective 'gatekeeping'. For the statistics, click here.

Goodbye RSLs: one consequence of the new regulatory regime for social housing taking effect on 1 April 2010 will be a change in terminology from "registered social landlord" (RSL) to "private registered provider of social housing" (PRPSH). Among the range of statutory and non-statutory materials requiring amendment to reflect the change are the rules, practice directions and protocols in the Civil Procedure Rules (CPR). Amendments to the *Pre-action Protocol for Rent Arrears*, among others, are made by the 52nd update to the CPR. For the rent arrears protocol, click here. For all the details of the amendments in the *52nd Update -Practice Direction Amendments*, click here.

Hello new regime: a raft of secondary legislation has been put through Parliament in the last few weeks to get ready for the new regulatory regime in social housing. For the Housing and Regeneration Act 2008 (Consequential Provisions) (No. 2) Order 2010, click here. For the Housing and Regeneration Act 2008 (Penalty and Compensation Notices) Regulations 2010, click here. For the Housing Management Agreements (Break Clause)(England) Regulations 2010, click here. For the Housing and Regeneration Act 2008 (Moratorium) (Prescribed Steps) Order 2010, click here.

Security of Tenure for Gypsies: following the tabling of Parliamentary Questions, the Government explained to the House of Lords on 17 March 2010 why it did not consider that it would be possible to commence the provisions of the Housing & Regeneration Act 2008, which would give security of tenure to gypsies on local authority caravan sites, before the General Election. For the Minister's statement at Hansard column 598, click here.

Housing law bulletin

Issue 171 - 22nd March 2010

Anti Social Behaviour: this month the Chartered Institute of Housing (Cymru) has published guidance for social landlords in Wales on implementation of the Wales Housing Management Standard for Tackling Anti-Social Behaviour. For a copy of the guidance, [click here](#). In a speech delivered on 9 March 2010 the Home Secretary announced two new developments on enforcement action to tackle anti-social behaviour (ASB): (1) from 5 April 2010, the Ministry of Justice will give judges new powers to set targets to ensure applications for ASBOs are dealt with speedily by the courts; and (2) when agencies and the police fail to take action to protect communities from ASB, the victims will get the support necessary to pursue any legal action against the perpetrator, with the agency which has failed them obliged to meet the costs. For a copy of the speech [click here](#). How communities perceive the problem of ASB is explored in the March 2010 Home Office Research Report 34 - *The drivers of perceptions of anti-social behaviour*. For a copy, [click here](#).

Help for Mortgage Defaulters: on 18 March 2009 the Social Security (Claims and Payments) Amendment Regulations 2010 were laid. They provide that, from 8 April 2010, where payments of mortgage interest are deducted from income support, etc. and paid to a lender, any amount paid in excess of the borrower's actual mortgage interest liability will be applied first to pay off any arrears of mortgage interest, and then to repay the principal sum of that mortgage or any other liability to the lender in respect of that mortgage. For a copy of the regulations, [click here](#). On 16 March 2010 the Housing Minister in England announced that a further £2.5m is being committed to achieving greater publicity of the help available to homeowners in difficulties. The new funding will be used to advertise the mortgage help website and National Debtline's free advice-line number. For the announcement, and details of the 86 repossession "hot spot" areas in which most help is being targeted, [click here](#).

Clamping down on HMOs: on 18 March 2010 a new Impact Assessment was published explaining the likely effect of the recent policy change that will increase the number of new HMOs which require planning permission (thus enabling local authorities to consider the impacts of the proposals). Where local authorities have concerns about the impacts of HMOs in particular areas they will be able to adopt local policies to control the density and spread of HMOs or to introduce standard conditions for HMO development. Planning applications will be assessed against these local policies allowing local authorities greater control over HMOs. For a copy of the Assessment, [click here](#).

Sub-letting Social Housing: the New Local Government Network has proposed that tenants who sub-let their public sector homes should be at risk of criminal prosecution. For a copy of *Don't Let On: New Measures to help tackle unlawful subletting* published on 9 March 2010, [click here](#).

Decent homes: on 18 March 2010 the House of Commons Public Accounts Committee published its review of the Decent Homes programme in England. It concludes that the 2010 target will be missed and that the Government needs to do more to ensure that landlords can complete the outstanding work and that properties are not allowed to fall back into disrepair. For a copy of the report, [click here](#).

Housing and Community Care: on 10 March 2010 the Howard League for Penal Reform launched *Young, Adult, No Support: The entitlements of young adults to care in the community*. The handbook is a practical guide to the rights and entitlements of young adults (18-21 year olds) for practitioners, including advisers, social workers, YOTs and probation officers. For a copy, [click here](#).

Housing law bulletin

Issue 171 - 22nd March 2010

The Latest Housing Case Law

17 March 2010

Drum HA Ltd v Thomas-Ashley

[2010] EWCA Civ 265

The defendant was the disabled assured shorthold tenant of a flat. Her housing association landlord held a long lease of her flat from the freeholders. In breach of the terms of her tenancy, the defendant began to keep a dog. She said that keeping it was critical to her own well-being. The freeholders alerted the association and insisted that it arrange removal of the dog or its own lease (which prohibited pets) would possibly be forfeit. The association served a Housing Act 1988 section 21 notice and sought possession. The Court of Appeal rejected an argument that the duties cast on landlords by the Disability Discrimination Act 1995 had been unlawfully infringed or that there had been discrimination on the grounds of disability. It upheld a possession order. For the judgment [click here](#).

16 March 2010

Orsus v Croatia

[2010] ECHR 337

The applicants were the children of Roma travelling families. The primary education system had involved the placement of the applicants in Roma-only classes. They complained of discrimination in provision of education contrary to Article 14. The Grand Chamber of the European Court of Human Rights (by nine votes to eight) reversed the unanimous judgment of its own Chamber and of the Constitutional Court and found an unlawful violation of the convention. The Court considered that there were at the relevant time no adequate safeguards in place capable of ensuring that a reasonable relationship of proportionality (between the means used and the legitimate aim said to be pursued) was achieved and maintained. It followed that no objective and reasonable justification for the discrimination had been made out. For the judgment, [click here](#).

16 March 2010

Joseph v Nettleton Road Housing Co-op Ltd

[2010] EWCA Civ 228

Mr Joseph was a founder member of the housing co-op. His tenancy began in 1983 and was not secure or assured. The tenancy agreement prohibited keeping of pets without the consent of all other co-op members. Mr Joseph began keeping a Staffordshire bull terrier. The other tenants objected and the co-op gave notice to quit. The judge made a possession order. Mr Joseph appealed, contending that the order for possession was unreasonable and disproportionate. The Court of Appeal dismissed the appeal. He had had ample time to re-home the dog and not done so. For the judgment [click here](#).

12 March 2010

R(Raw) v Lambeth LBC

[2010] EWCA Civ 222

The claimant, a homeless single man, applied to the council. A Housing Options officer suggested he take up the council's Lettings Direct Scheme under which a private sector tenancy would be arranged for him. The documentation for the scheme indicated that his homelessness application would not be progressed if he agreed to join it. The claimant sought judicial review of what his solicitors said was outrageous "gatekeeping" but before the claim could be tried the council agreed to proceed with his homelessness application and in due course accepted that it owed him the main duty. The High Court declined an invitation to continue the claim but the judgment (at paras [70] - [82]) contains helpful general observations about arrangements which

Housing law bulletin

Issue 171 - 22nd March 2010

may appear to be designed to avoid enquiries into homelessness applications and/or provision of accommodation during enquiries. For the full judgment, [click here](#).

11 March 2010

R(O) v East Riding of Yorkshire CC

[2010] EWHC 489 (Admin)

The claimant, a teenage boy, was accommodated and 'looked after' by the council under Children Act 1989 section 20. Following an assessment of his special educational needs, the council found him a place at a residential school where he would be both educated and accommodated, bringing his status as a 'looked after' child to an end. A claim for judicial review was dismissed. Although it may represent a lacuna in the statutory scheme, the council had been right in its interpretation of the Children Act and the Education Acts, in considering that the boy would cease to be a 'looked after' child. For the full judgment, [click here](#).

10 March 2010

R(Smith) v Land Registry

[2010] EWCA Civ 200

The claimant had lived in his caravan and associated structures on an unmetalled byway for more than 12 years. He applied to the Land Registry to register his title to the land based on adverse possession. The application was opposed on the grounds that the land was part of a highway. A definitive map established that all the land he occupied had been designated a public highway. The Land Registry dismissed the application and the claimant sought judicial review. The Court of Appeal upheld the dismissal of that claim. Adverse possession could not be established in relation to a parcel of land wholly on a public highway. Whether action by public authorities to remove him from the land would infringe his rights under Article 8 was left open. For the full judgment, [click here](#).

10 March 2010

Bradford & Bingley v Ashcroft

[2010] EWCA Civ 223

The defendant bought a house in 1990 with an £85,500 mortgage. He made no repayments and the house was repossessed and sold for £57,500 in 1992. The lender waited three years and then began to press for payment of the balance. In 2000 the defendant started to make payments of £10 per month towards the debt. In 2008 the lender sued for the shortfall. The Court of Appeal held that although the claim had been brought more than 12 years after payment fell due, the recent modest repayments triggered a continuation of the period under Limitation Act 1980 section 29(5) and so the claim could be pursued. For the full judgment, [click here](#).

9 March 2010

Henley v Bloom

[2010] EWCA Civ 202

A claim for possession brought by a landlady against her tenant was compromised by an agreement that possession would be given on payment of an agreed sum. Before departing, the tenant commissioned an inspection by an expert on housing conditions. On taking possession, the landlady sent in builders who renovated the premises. The tenant then brought a claim for damages for disrepair. The landlady successfully applied to strike out the claim on the basis that it was an abuse of process not to have raised the claim in the previous proceedings and because it would be impossible to have a fair trial as she could not commission an expert to report on what conditions had been before the renovation. The Court of Appeal allowed the tenant's appeal and restored his claim. There had been no 'abuse' and a trial was not impossible as the landlady had surveyors' reports about the condition pre-renovation and could call her

Housing law bulletin

Issue 171 - 22nd March 2010

builders to give evidence of the conditions they had found. For the full judgment [click here](#).

9 March 2010

Wilson v Ashford Borough Council

[2010] EWHC (Admin), [2010] All ER (D) 77 (Mar)

The council served Ms Wilson with a notice to abate a statutory nuisance under Environmental Protection Act 1990 section 80. She appealed to the magistrates' court but the appeal was dismissed with costs. She gave notice of appeal to the Crown Court but a few days before the hearing date, she withdrew that appeal. The Divisional Court upheld an order that she should also pay the council's costs incurred in the withdrawn appeal despite a notification from the Crown Court which had suggested that an appeal could be withdrawn on at least 3 days minimum notice.

8 March 2010

R(Coombes) v Waltham Forest LBC

[2010] EWHC (Admin), [2010] All ER (D) 59 (Mar)

Following the death of his parents, who had been council tenants, the claimant applied for the tenancy of the family home where he had lived since 1954. The council declined and sought possession. The claimant defended on the basis that: (1) in the light of his personal circumstances an eviction would be in breach of his right to respect for his home (Article 8); and (2) to the extent that Housing statutes compelled a contrary result they were incompatible with the Human Rights Act 1998. The High Court refused to make declarations of incompatibility. Permission to appeal to the Court of Appeal was granted. (The appeal could be heard, possibly together with the appeal in *Kendall v Barnet LBC* B5/2010/0534, by the same judges of the Court of Appeal who have just completed consideration of five similar linked appeals following the failure of an application to delay those hearings: *Powell v Hounslow LBC* [2010] EWCA Civ 269.)

3 March 2010

R(M) v Hammersmith & Fulham LBC & others

[2010] EWHC 562 (Admin)

The claimant sought accommodation on being discharged back into the community after a period of detention under Mental Health Act 1983 section 3. The judicial review claim was brought because the local authorities for the areas in which he had previously lived could not agree which was responsible for the costs of accommodating him. The claim was linked with another raising the same problem. The High Court rejected the case of one council that there was a legitimate expectation that the other(s) would comply with an agreement made in 1988 between the AMA and ACC about how such disputes between local authorities would be resolved.

3 March 2010

R(O) v Barking & Dagenham LBC

[2010] EWHC (Admin), [2010] All ER (D) 36 (Mar)

The claimant was accommodated by the council as an under-18 asylum seeker. All his applications and appeals for asylum failed and after he had reached adulthood the council decided to withdraw the accommodation because the claimant would then be housed by the UK Borders Agency's NASS scheme. The High Court dismissed a claim for judicial review of that decision. Nothing in the council's obligations under the Children Act 1989, owed to a 'former relevant child', required the council to provide accommodation when other accommodation was available.

2 March 2010

Kozak v Poland

Housing law bulletin

Issue 171 - 22nd March 2010

[2010] ECHR 280

The applicant lived with his same-sex partner in the latter's council flat. The partner died and the applicant claimed that he had succeeded to the tenancy. The relevant legislation provided for succession by those who had been in "*de facto marital cohabitation*". The national courts held that the test could not be met by a same sex couple. The European Court of Human Rights upheld the applicant's complaint of a violation of Article 14 read with Article 8. No convincing or compelling reasons had been advanced by the Polish Government to justify the distinction in treatment of heterosexual and homosexual partners at the material time. Moreover, the fact that an amendment made shortly afterwards removed the difference between "marital" and other forms of cohabitation confirmed that no such reasons were available to maintain the previous rule. [Click here](#).

24 February 2010

Lekpo-Bozua v Hackney LBC

[2010] EWCA Civ 222

The council owed the claimant the main housing duty under Housing Act 1996 Part 7 (homelessness) because she lived with a dependant child. But the council proposed to discharge the duty by arranging a private sector assured shorthold tenancy (rather than social housing) because the child was an EU national with no right to reside in the UK and therefore a 'restricted person' under the 1996 Act (as amended). The judge dismissed an appeal from that decision. The Court of Appeal gave permission for a second appeal. The grounds of appeal asserting that the 'restricted person' scheme discriminated on grounds of nationality - contrary to human rights legislation - and that the child was in any event exercising EU treaty rights raised issues of importance that justified a full appeal hearing.

29 January 2010

Elias v Spencer .

[2010] EWCA Civ 246

The landlord of an assured tenant served a Housing Act 1988 section 21 which specified that possession was sought "After: 22ND NOVEMBER 2008 or, if this notice would otherwise be ineffective, after the date being the earliest date not earlier than two months after the date of service of this notice when shall expire a period of the assured shorthold tenancy". The last date of a period of tenancy was, in fact, 21 November. On the possession claim, a judge held that the saving words were sufficient to validate the notice. The Court of Appeal dismissed an application for permission to appeal.

Housing Law Articles

Whose deposit is it anyway?

T. Cox

[2010] 160 *New Law Journal* 375

A family affair - Part 1

(Informal family arrangements about housing)

M. Mackreth

[2010] 138 *Adviser* 21

Slamming the brakes on car-cruising

(A commentary on use of a section 222 injunction in *Birmingham CC v Persons Unknown*)

J. Manning

Housing law bulletin

Issue 171 - 22nd March 2010

[2010] *Local Government Lawyer* 16 March
For a copy of the article, [click here](#).

Dropping Anchor

(Eligibility for homelessness assistance)

T. Vanhegan

[2010] 19 March *Inside Housing* p35

To read the article, [click here](#).

Housing casebook: Rescue me!

(Examines the fall-out of a mortgage rescue scheme from the last recession)

M. Robinson

[2010] 138 *Adviser* 27

Housing Law Books

Repairs: tenants' rights

The new edition of *Repairs: tenants' rights* by Jan Luba QC, Deirdre Forster and Beatrice Prevatt has been published. Price: £45.00. For full details, [click here](#).

Housing Allocation and Homelessness - new edition

The new edition of *Housing Allocation and Homelessness: Law and Practice* by Jan Luba QC and Liz Davies can now be ordered. Price: £50.00. For full details, [click here](#).

Housing Law Handbook - 10% off

The Housing Law Handbook, edited by Stephen Cottle and written by other members of the Garden Court Housing Team, provides a first port of call for lawyers and advisors dealing with housing. The book covers possession proceedings, homelessness rights, the allocation of social housing, and other routes into housing. To claim your 10% discount, order online and quote promotion code GCTHLH when prompted.

Housing Law Consultations

[This week] Closing on 24 March 2010

The CLG consultation on changes to the Code for Sustainable Homes. For a copy of the consultation paper [click here](#).

Closing on 28 March 2010

The Ministry of Justice consultation on a proposal to require mortgage lenders to obtain a court order or the consent of the borrower before repossessing and selling residential owner-occupied homes. For a copy of the consultation paper, [click here](#).

Closing on 16 April 2010

The Equality & Human Rights Commission consultation on non-statutory guidance under the Equality Bill. For copies of the consultation documents and further details, [click here](#).

Closing on 28 April 2010

The HM Treasury consultation on investment in the private rented sector. For a copy of the consultation paper, [click here](#).

Closing on 30 April 2010

The Ministry of Justice consultation on minimum thresholds of debt default necessary to found

Housing law bulletin

Issue 171 - 22nd March 2010

Orders for Sale of debtor's homes. For a copy of the consultation paper, [click here](#).

Closing on 30 April 2010

The FSA consultation on proposals to help ensure that mortgage borrowers in arrears are treated fairly. For a copy of the consultation papers [click here](#).

Housing Law Events

15 April 2010

Judicial Review Conference

A conference organised by Garden Court Chambers in London (to be repeated in Birmingham in July 2010).

For the details, [click here](#).

29 April 2010

Homelessness and Lettings

A Lime Legal Conference in London.

For the details, [click here](#).

29 April 2010

Public law and housing

A LAG Training event in London.

For the details, [click here](#).

29 April 2010

Homelessness: getting past the gatekeepers!

A Garden Court Chambers evening seminar.

For the details, [click here](#).

13 May 2010

Social Housing Law and Practice

A Lime Legal Conference in London.

For the details, [click here](#).